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CHAPTER 11

The impact of labour regulations: Measuring the effectiveness of legal norms in a developing country

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Introduction

It is paradoxical that the recent flourishing of research on the economic impact of labour regulations has exposed the simplistic understandings that pervade this literature and that underpin deregulatory policy agendas. The debate among economists is conducted between two competing schools, which might be characterised as “distortionists” and “institutionalists.” These accord different weights to the economic costs and benefits of labour regulation and have embarked upon divergent quests for optimal institutions (for a review, see Bertola 2008 and Freeman 2009). Both strands of this research are problematic, however, especially in their relevance to developing countries, in that most of the studies assume the *de jure* and *de facto* reach of labour laws to be coterminous. In consequence, they neglect to consider the effectiveness of legal regulations (Aherling and Deakin 2007; Lee and McCann 2008).

This chapter contends that analyses of the economic and employment impacts of labour regulations in developing countries will inevitably be misleading unless effectiveness is integrated into the analysis. In an effort to help shape such an approach, new survey data from Tanzania is drawn on to explore certain of the key dimensions of legal effectiveness, namely workers’ awareness of legal standards and the actions they take in response to the breach of these norms.

More specifically, our rather optimistic estimates will show that although the majority of workers in Tanzania are familiar with the statutory standards on working time, minimum wages and maternity protection, a substantial number, around one-third, are unaware of these legal standards. However, workers’ awareness has little to do with the existence of a written employment contract, which suggests that employment contracts in Tanzania often lack the necessary substance. At the same time, workers’ awareness is strongly associated with higher levels of working conditions, particularly in the case of working time and maternity leave. While the channelling mechanism for this association is yet to be fully understood, this paper will argue that this effect can take place through influencing job satisfaction and/or changing workers’ behavioural patterns, especially vis-à-vis employers. These findings suggest strong potential for improving working conditions through increasing workers’ awareness, without substantial institutional reform.

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The effectiveness of labour law in low-income settings

Rather schematically, two central positions can be identified in economic impact literature on the operation of labour law. The first, the “formalist” narrative, adheres to a mechanistic view of labour laws by assuming their application to be both comprehensive (laws protect all workers who fall within their scope) and complete (workers are entitled to the full array of legal protections outlined in legal texts, to the maximum permissible extent). Perhaps not surprisingly, this crude notion of regulation has a muted presence in the scholarly literature. It has, however, found favour in the policy realm, where it underpins much of the deregulatory rhetoric that has in recent years been extended to developing economies. This account is most visible in the work of the World Bank’s Private Finance Initiative (PFI), and in particular in the assertions on the economic impact of labour standards made in the PFI’s *Doing Business* reports (see in particular World Bank 2005). While the research that underpins the *Doing Business* project offers a more sophisticated understanding of the operation of labour laws (Botero et al 2004; although see Aherling and Deakin 2007), the Bank’s policy guidance has posited a relationship between labour laws and economic outcomes that is grounded in formalist assumptions and has generated simplistic conclusions about the damaging economic impact of labour standards (Cazes and Berg 2007; Lee and McCann 2008).

The formalist discourse has fuelled an accompanying narrative of the urgency and promise of labour law reform that has been influential in many developing countries. Governments have been prompted or encouraged to embark on sometimes semi-continuous projects of reform that are carried out in the absence of empirically-grounded understandings of the operation of the existing legal measures (on Asian countries, see Lee and Eyraud 2008). Tanzania offers an example of such an initiative. A major project of labour law reform was embarked on in the early years of this century with the stated aims of simplifying the regulation of business, attracting foreign investors and competing with other developing countries (Ackson 2009). This culminated in the enactment of legislation devoted to both substantive individual rights (the Employment and Labour Relations Act 2004) and enforcement mechanisms (the Labour Institutions Act 2004).

The World Bank literature also illustrates the second key narrative of labour law’s operation in low-income settings. This “pessimist” account depicts legal regulation as broadly irrelevant to the developing world for a variety of reasons, whether in the assumption that laws are so ineffectively enforced as to be irrelevant, so economically inappropriate to be damaging, or transplants from colonial ‘parent’ regimes that have inevitably failed to seed. One version of the pessimist narrative suggest a clear-cut dichotomy between ‘formal’ and ‘informal’ economies, with labour standards unknown in, or irrelevant to, the latter (World Bank 2005). There is also identifiable a degree of despair about legal and institutional change that contrasts with the optimistic account of reform harboured by the formalist narrative. This position in part reflects a suspicion about the worth of conventional enforcement mechanisms that is being challenged by the evolving literature on labour inspection in low-income countries (e.g. Piore and

Shrank 2008; Pires in this volume). It also questions the relevance of conventional legislated standards by constructing a dichotomy between these and other, 'soft,' forms of regulation, primarily Corporate Social Responsibility (CSR) initiatives, and positing the latter as the preferred, rather than a complementary, mode of regulation.

By rejecting both these narratives, this chapter is tied to literatures on the role of labour market regulation in low-income countries that are of a contrasting impetus and origin to the economic impact research. One is the evolving search, often animated by recourse to Sen's capability theory, for a rationale for labour market regulation that can support both social and economic development (see, for example, Deakin 2001; Lee and McCann 2006; Langille 2007). A nascent interdisciplinary literature is also rejecting conventional assumptions about the role of regulation in developing countries and instead endeavouring to elicit the details of law's operation in these settings and to suggest techniques for more effective regulation (Fenwick et al 2007; Berg and Kucera 2008). These literatures are now sufficiently evolved to support investigations of the role and intersection of regulatory forms in low-income settings that can parallel the level of detail and contextual awareness that characterizes analyses of advanced industrialised economies.

The chapter can therefore be situated in relation to a number of debates reflected in the literature on labour market regulation in low-income countries. It is feasible, for example, to configure this analysis, at least in part, as an exploration of the role of legal regulation in the 'informal economy,' in that an element of its enquiry is whether legal norms are, or have the potential to be, relevant in contexts in which enforcement of legal norms is unlikely. These contexts can therefore be subsumed within conceptions of informality, and in particular by the ILO's reigning characterisation of this phenomenon as *de jure* or *de facto* resistance to legal regulation (ILO 2002, para 3). The chapter examines whether the law can exercise some degree of influence on firms and working relationships that have, at least in certain of their dimensions, a tentative relationship with state regulatory norms. In this regard, the analysis builds on a notion of 'legal observance,' which has been elaborated elsewhere to capture compliance with the central substantive dimensions of legal standards in the absence of the likelihood of enforcement (Lee and McCann 2005; see also Frey in this volume). The notion of observance is drawn on in this chapter in both its descriptive and normative dimensions: as the former guise, to measure legal awareness (see Section Four below); in the latter, to question whether formalisation strategies can be tied to an influence of statutory standards that is distinct from the formal apparatus of the legal system.

This endeavour also implicitly responds to the ongoing deliberations within labour law scholarship on the future of the field (e.g. Collins et al 2003; Conaghan et al 2004; Langille and Davidov 2007; Arup et al 2007). In this regard, it suggests one of the possible avenues towards eliciting a richer understanding of labour law's present state, and therefore more effectively to predict or guide its future, is to engage in a detailed analysis of the operation of specific legal measures that is attentive both to the requirements of specific legal standards and to regulatory and national contexts. As a result, the chapter carves a narrow focus of analysis along the axes of regulatory technique, substantive subject, and national context.

With respect to regulatory techniques, statutory standards are singled out for examination: substantive requirements on working relationships that are imposed by the state (and which contrast with the ‘procedural intervention’ of collective bargaining) (Langille 2007, p 25). The selection of statutory standards may appear rather quaint. In recent scholarship, legislated norms appear more often as a relic of labour law’s past than a symbol of its future. The shift towards CSR, for example, as both policy initiative and research preoccupation, is substantially a response to the recognised deficiencies of state-level regulation. In labour law’s reception of regulation theory, statutory standards have been associated with the discredited ‘command and control’ model of mandatory standards backed by sanctions.¹ The literature on legal indicators has inspired protests over its preoccupation with statutory regulation to the exclusion of collective bargaining (Lee and McCann 2008). And some authors question the promise of the very project of statutorily-mandated labour rights. As Arthurs has suggested,

The greatest gains for workers might perhaps come, not from securing access to a fixed array of legally enforceable protection and benefits, but from being regarded as an indispensable component of every calculus of public policy which might affect them (Arthurs 2006, p 388).

Against the grain of this disillusionment with statutory standards, the chapter makes a case for a careful examination of the role, significance, and potential of legislated norms in developing countries. In part it is inspired by the turn to regulation theory in labour law scholarship, which in the process of rejecting ‘command and control’ models points to a future for statutory norms distinct from their conventional role. In such novel regulatory designs, statutory standards are aligned with the array of other techniques suggested to constitute ‘innovative’ regulatory frameworks (financial incentives, training, information campaigns etc.) (Arup 2001; Fenwick et al 2007). As Fenwick et al suggest in their study of laws on micro and small enterprises:

[I]nnovative approaches to regulation do not require the State to abandon traditional methods of labour regulation [L]egally binding standards must remain the touchstone of any regulatory system (Fenwick et al at 15).

Such insights on the potential for statutory standards to form part of a broader array of regulatory techniques confirm the distinction between the substantive requirements of such standards and the techniques adopted for their implementation or enforcement, and thereby reinforce the contention that reform efforts should be centred on the latter (Lee and McCann 2008,). They also help to situate labour standards in relation to evolving conceptions of formality and informality, in which working relationships and firms, rather than constituting distinct formal and informal ‘sectors,’ occupy points along a continuum of formality that is shaped by the degree of compliance with legal requirements across a range of cognate fields (ILO 2002; Chen et al 2007). This in turn suggests the merits of investigating whether protective standards have more influence on ‘informal’ working relationships than is suggested by the formalist narrative identified earlier.

¹ For an exploration of the implications of regulation theory for labour law scholarship, see Arup et al 2007.

To justify its faith in the exploration of statutory regulation, this chapter examines the relevance of legislated standards to workers themselves. In part, this approach is in line with the literature on labour law indicators, which has taken into account the actions of a number of labour market actors. These actors have been called on, for example, to assess the depiction of national laws in the relevant indices. Chor and Freeman (2005), for instance, have found the World Bank's *Employing Workers Index* (EWI) to be out of line with understandings on the part of both trade unionists and employers on the requirements of a number of the domestic labour laws. The role of the judiciary has also been explored. In the economic literature, the intensity of labour inspection and magnitude of penalties for violation tend to be taken to account for "observance" or compliance (e.g., see Squire and Suthiwart-Narueput 1997). Other research, however, reveals a far more complex picture. A number of studies highlight the critical role of the judiciary in determining legal requirements (Bertola and Cazes 2000; Bhattacharjea 2006; Deakin et al. 2007); and reveal the difficulties in capturing this judicial role in the form of indices to be exacerbated when complex relationships exist between federal state or provincial laws (see e.g. Bhattacharjea 2006; Cooney 2009). The impact of labour regulations has also be recognised to depend to some degree on the response of enterprises to their requirements. Edwards et al (2004), for instance, investigating the employment impacts of minimum wage legislation in small firms in the UK, found its effects to vary according to 'competitive conditions,' which proved to be more influential than the regulations themselves.

There is substantial evidence, then, of the role of executive, judiciary and enterprise behaviours in determining the impact of labour regulations.² The response of workers, however, is largely absent from this literature. Clearly, worker reactions to legal norms can be either individual or collective, and outcomes will vary accordingly. The intent of this chapter is to capture what is essentially an individualistic response, in its examination of legal awareness, including according to key variables such as gender, age and education.

As part of its call for a targeted analysis, the chapter also suggests attentiveness to the diversity among substantive standards within the labour law canon, to suggest the variations in effectiveness among different legal norms. In line with this approach, the chapter is centred exclusively on what can be termed 'working conditions' laws. This chapter therefore impinges on the rapidly evolving field of research on job quality (see the central contribution of Green (2006)); and in particular on the contribution of job quality to economic development (Deakin and Wilkinson 2000). It is increasingly recognised that although the quantity of employment generated in the recent decades of economic growth has been prominent, the quality of this employment has been overlooked (e.g. Lee and Eyraud 2008; Chen et al 2008). In this regard, the particular focus of this chapter is on traditional components of quality of work, namely the legal standards that govern wages, hours of work and maternity leave.

² Another strand of literature on the enforcement of labour standards has examined the role of trade in weakening or strengthening legal measures as developing countries shift to more open economies. See Brown (2001) and Berik and Rodgers (2008).

Finally, in line with its call for a detailed analysis of labour law's operation in specific developing countries,³ this chapter focuses on the key East African economy of Tanzania, for reasons that are explored in the following Section.

Awareness and labour regulation in developing countries

Worker awareness and enforcement of legal measures has emerged as a subject for research in industrialized countries in part due to an awareness of growing vulnerability within increasingly individualized regulatory frameworks (Pollert 2005; Meager *et al* 2002). As collective mechanisms decline and legislated individual rights become more significant, the enforcement of these entitlements has been displaced from its rather peripheral position within the labour law debates and ushered to centre-stage. This growing preoccupation with the significance and role of individual legislated entitlements has spawned a literature on the enforcement of legal standards by individual workers.

This literature is particularly developed in the UK, a regime in which a straightforwardly deregulatory government was replaced in the late-1990s with one that remained suspicious of collective regulation of the labour market, but was devoted, at least initially, to enacting a set of individual employment rights (e.g. Holt and Grainger 2005; Meager *et al* 2002; White and Croucher 2007; on the 'New Labour' labour law project in the UK see further Davies and Freedland 2007). In this context, and with backing from a government eager to measure the influence of the legislated standards, a literature developed that is centred on workers' awareness of employment rights and the techniques they use to assert their legal entitlements. Primarily empirical in nature, this line of work has developed and refined methodologies to pursue these issues, and has been drawn on in designing the 'legal awareness' elements of the *Working Conditions Survey* (see further below).

Beyond the UK, this line of research is not as advanced, although Eamets and Masso (2005) have highlighted the weak enforcement of employment protection laws in Baltic countries, which they found partly attributable to poor awareness, and Cooke has reported the findings of a survey in China that found most workers and employers to be unaware of legal standards (Cooke 2005). Further, the significance of awareness-raising to improving working conditions in developing countries has attracted the attention of Fenwick *et al* (2007) in a study of micro and small enterprises that represents one of few attempts to consider the extent of legal awareness and its potential impact on actual working conditions in low-income economies.

Despite the rather limited research, a preoccupation with individual legal rights can be seen as highly relevant to developing countries, if the focus is on certain of their parallels with deregulated regimes in the industrialized world. As labour markets in which collective norms are not a forceful form of regulation and legislation has the most prominent role among formal regulatory techniques, these industrialized and developing

³ This observation confirms Saavedra and Tommasi's (2007) reflection on the need to address informal work that the diagnosis and policy to address informality have to be country specific.

regimes have shared preoccupations, in particular with the regulation of informal and precarious work (on industrialized countries, see Ram *et al* 2004; Vosko 2007; Fudge and Owens 2006).

These parallels emerge in Tanzania, where the collective representation of workers is minimal and legal rights primarily enforced by way of individual complaint-based mechanisms (Ackson 2009). Yet there is also commitment at the policy level to integrating the quality of employment into job creation strategies. This policy stance reflects pan-African initiatives. In recent years, the *African Union Extraordinary Summit on Employment and Poverty Alleviation in Africa* held in Ouagadougou in September 2004 overwhelmingly endorsed the ILO's Decent Work Agenda, placing a particular emphasis on the creation of quality jobs. The Tanzanian government supported this call, which is reflected in the National Strategy for Growth and Reduction of Poverty (2005–2010) and the National Employment Policy (2008). More recently, a tripartite policy statement on job quality was adopted by national stakeholders, which confirmed job quality as a goal of national policies on employment and job creation (ILO 2009, pp 26-32).

Data and methodology: the *Working Conditions Survey Global Module* and Survey of Working Conditions in Tanzania

Reliable information on working conditions in developing countries is limited. It is even more challenging to find data on workers' legal literacy, whether on employment law entitlements generally or on the sub-set of working conditions laws. Given these constraints, empirical testing of the speculation in the literature on the influence of labour law in developing countries has so far been impossible. The programme of research on which this Chapter reports was designed in an attempt to identify one approach to respond to these challenges.

A *Working Conditions Survey Global Module* has been jointly developed by a team of economists and lawyers from the Conditions of Work and Employment Programme of the International Labour Organisation (ILO) and the European Foundation for the Improvement of Living and Working Conditions (EFILWC). The *Global Module* was adapted from the survey instrument of the *European Working Conditions Survey* (EWCS). This survey, designed by the EFILWC, has been conducted periodically in European countries since 1991 and investigates a broad range of aspects of the quality of working life (on the EWCS, see EFILWC 2007). The *Global Module* was designed with the aim of improving the capacity of ILO constituents to monitor changes in working life by enabling comprehensive and systematic review of changes in the quality of working life in low-income countries.⁴ The *Global Module* is designed to take into account labour market conditions in developing countries, and in particular the massive presence of informal work, and to be adjusted to take account of the national context of the countries in which it is conducted.

⁴ See further the *Global Module* at www.ilo.org/gwcs (under construction).

The data in this Chapter are drawn from the *Survey on Working Conditions in Tanzania* (SWCT), the first national survey to be designed in line with the *Global Module* and intended to pilot-test its operation. A household survey conducted in *urban centres* in seven regions across Tanzania⁵ the SWCT covered a *nationally-representative* sample of 1,249 individuals in 1,240 households across Tanzania were interviewed (for full details of the survey, see Kahyarara and Rustasitara 2009). The SWCT has therefore generated the first nationally-representative sample of detailed data on conditions of work in a low-income setting.

Prior to the SWCT, data on working conditions in Tanzania were sparse. The existing sources either contained limited information. The Labour Force Surveys conducted by the National Bureau of Statistics provide information on certain aspects of working conditions, but it is not a primary objective of the survey and the data is infrequently analyzed (or not analysed in much depth. Data on quality of work in the Tanzanian labour market are also available from individual or institutional surveys, such as the Tanzania Manufacturing Enterprises Survey (TMES), although not in great detail.

In designing the SWCT, it was decided in consultation with representatives of the Tanzanian government, and national-level trade unions and employers organisations to target the survey on urban areas and on the tourism and informal sectors. Both are key growth sectors in the Tanzanian economy. Reforms since the 1990s have reduced barriers to entry and introduced competition in product and labour markets, triggering a rapid growth and the emergence of rapidly growing sectors, which have included the tourism sector. Income generated from tourism⁶ increased from US\$ 65 million in 1990 to US\$ 1,083 million in 2005 and employment in the sector is significant and growing rapidly (Kahyarara and Rustasitara 2009). The selection of the tourism sector therefore elicits knowledge of working conditions in a growth sector that includes large firms and also small less-formal enterprises.

The selection of the informal sector permits an investigation of working conditions in relationships conventionally defined as informal. In Tanzania, informal jobs, defined in the conventional manner to include the self-employed and casual workers and those in small enterprises are estimated to account for 70 per cent of the workforce in urban areas (Labour Force Survey figures). Tanzanian Labour Force Survey figures indicate that employment increased by 484,201 or growth - or over 48,000 jobs annually - between 1990/91 and 2000/01; and by 816,176 during the five year period 2000/01-2005/06, or the equivalent to the creation of 163,235 jobs on average annually (Kahyarara and Rustasitara 2009).

Significant efforts were made in the design of the *Global Module* to develop an effective method of measuring informal employment. This was achieved primarily by introducing a set of multi-layered filtering questions which identify informal employment by small establishment size (less than 5 people usually work in the establishment), location (on “a footpath, street or open space”) and absence of a written contract or agreement. This technique permitted the SWCT to cover a range of activities

⁵ Dar-es-Salaam, Mwanza, Mbeya, Aruha, Kilimanjaro, Tanga and Morogoro.

⁶ International tourism is largely concentrated in the Northern Wildlife Area, encompassing Lake Manyara, the Serengeti, the Ngorongoro Conservation Area and Mt. Kilimanjaro.

across the informal sector ranging from simple service activities to manufacturing and technical services and embracing a wide range of occupational classifications.

Both the tourism and informal sectors have been singled out in government policy as among the most promising sources of employment, and therefore of poverty reduction. These sectors therefore feature in policy efforts to alleviate unemployment and poverty, which have included in recent decades macro-economic policy reforms, increased investment in the private sector, promotion of skills training, youth programmes, increasing financial services by both the government and private sector and legislative and policy reforms intended to create an attractive environment for investment (Kahyarara and Rustasitara 2009). As part of these broader policy initiatives, the government developed a range of national employment policies⁷ and articulated an objective in the National Employment Creation Programme (NECP) of creating one million “gainful and decent” jobs over the period from 2006-2010. These goals included increased public investment in tourism and developing strategies for the transformation of the informal sector.

In line with the strategy outlined in the *Global Module*, changes were made to the survey methodology of the SWCT to tailor it to the economic life of a developing country and the specificities of the Tanzanian labour market (see further Kahyarara and Rustasitara 2009). This was conducted by a Tanzania-based research team led by the University of Dar-es-Salaam. A translation procedure was developed and translators were given very clear definitions of all the terms used in the questions. The questionnaire was then translated into Swahili and ambiguous or confusing words reviewed with the interviewers.

With the close collaboration of experts from the Tanzanian National Bureau of Statistics the research team developed a sampling plan that generated a representative sample of households.⁸ An appropriate weighting of sample frame was undertaken to allow an acceptable sample size.⁹ The sampling strategy followed the national standard practice for the Labour Force Survey, with the advantage that the SWCT will provide supplementary information to the existing Labour Force Survey. The research team then pre-tested the survey instrument and it was reviewed based on the pre-test experience. Finally, given the nature of the working environment in urban areas, and in contrast to the EWCS, in which respondents are interviewed exclusively in their households,

⁷ The National Employment Policy, National Employment Strategy, National Creation Programme, National Youth Development Policy and National Youth Employment Action Plan.

⁸ To allow for the randomness of the selected sample, the team used an unordered list of households whose primary activity is in the informal sector and tourism-related activities to create non-systematically order of the list of urban households in the selected wards (or districts). The wards were also randomly selected from a list of urban-located wards in each region. To maximize the tourist-related activities, randomly sampled tourist enterprises, especially in the Northern Circuit and Mikumi areas (which are popular destinations for tourism), were selected. Using small sampling frames simple random sampling was used to select the respondents, while allowing for over-sampling for the tourism sector. For further details see Kahyarara and Rustasitara (2009).

⁹ This was achieved by first dividing Tanzania into three cross sections, namely the North and Western part, The North and Eastern part and the Central Coast and Southern part. Then a careful weighting of the sample was done to capture urban and tourist areas. The areas later provided appropriate clusters with informal and tourism activities in urban Tanzania.

respondents to the SWCT were interviewed in either their households or workplaces due to difficulties in locating these workers.

Awareness of working conditions laws

One of unique aspects of this survey is that, along with questions about actual working conditions (e.g., employment status, wages/incomes, working time and work organization, physical work environment, work and family etc.), it includes a set of questions centred on whether the workers are aware of their working conditions entitlements. Specifically, respondents are asked if they are aware of their legal rights in relation to minimum wages, working time and maternity leave (see Table 1).¹⁰

The survey questions on awareness are novel; they are not present in the EWCS survey instrument, which does not address legal measures on working conditions. In part, this omission is attributable to the complexities of identifying the relevant legal standards across all EU Member States, in particular due to the diversity of the regulatory systems (e.g. the balance in reliance on collective measures, level of articulation of legal norms in federal systems etc.) These problems were overcome in the SWCT, in part because the survey was conducted in one jurisdiction¹¹ and also because legal standards are articulated in legislative form at the national level.

While these questions present a reasonable method of capturing workers' awareness (especially given the paucity of such data), there are some outstanding questions. One is that the survey questions have the potential to overestimate the extent of awareness, since they specify the relevant statutory standards. Such reminders may tempt the respondents to falsely claim that they are aware of these standards (Meager et al). The resulting estimates could be expected to be much higher than those obtained from other types of questions such as those that ask respondents to specify the existing standards.¹² This potential upward bias in estimation should be taken into account in interpretation and analysis.

Table 1. Survey questions about workers' awareness

Q9-1	Are you aware that most workers are entitled to be paid a specific minimum wage (which is currently set at ____ *)?
1	Yes
2	No
Q9-2	Are you aware that most workers should not be required to work more than ____ hours* per week (beyond which overtime premium should be paid)?
1	Yes
2	No
Q9-3	Are you aware that most workers are allowed ____ weeks* of maternity leave off work to have a baby?
1	Yes
2	No

¹⁰ This module is available from the authors on request.

¹¹ The survey was confined to mainland Tanzania.

¹² Some surveys on awareness have posed more direct questions such as: "Can you tell me what you think is the current hourly rate of the minimum wage for adult workers?" (e.g., White and Croucher 2007).

Source: The Global Module for Working Conditions Survey (draft)

* The final survey questionnaire used in the field work specifies relevant statutory standards.

The pilot testing of this survey was carried out in early 2009 in three major urban areas in Tanzania (Dar-es-Salaam, Mwanza and Mbeya).¹³ The total sample was 1,249, although the tourism sector was over-sampled with 399 respondents solely from the formal sector.¹⁴ As a different sampling framework was used for the tourism sector, this paper excludes it and focuses on non-tourism sectors.

Tanzania is a low-income country with around 700 dollars of GDP per capita (in PPP) and has witnessed unprecedented economic growth in recent years (higher than 6 per cent). Employment growth has also been strong, but with a considerable expansion of informal jobs. More than 80 per cent of jobs are informal (ILO 2009).

Statutory norms and workers' awareness: level and variations

Table 2 shows the extent of workers' awareness of working conditions standards.¹⁵ Overall, a significant proportion of respondents (at least one quarter) were not aware of statutory entitlements to working time, minimum wages and maternity protection. Yet, variations in awareness of the different standards are also considerable.

Table 2. Workers' awareness (% of employees: excluding tourism sector: N=666)

	Minimum wages	Working time	Maternity protection
<i>All</i>	73.9	67.5	61.9
<i>Gender</i>			
Male	73.6	66.3	55.8
Female	73.9	69.8	77.5
<i>Age</i>			
16-20	33.3	30.6	41.7

¹³ The scope of the survey was to cover 1,000 households. To allow for the randomness of the selected sample, the team which was led by the University of Dar-es-Salaam used the unordered list of households whose primary activity is in informal sector and tourism related activities to create non-systematically order of the list of urban household in the selected wards (or districts). The wards were also randomly selected from a list of urban-located wards in each region. To maximize the tourist related activities, randomly sampled tourist enterprises, especially in the Northern Circuit and Mikumi areas (which are popular destinations for tourism), were selected. Using small sampling frames simple random sampling was used to select the respondents, while allowing for over-sampling for the tourism sector. The total number of respondents was 1,240 households. For details of the survey results, see Kahyarara and Rustasitara (2009)

¹⁴ This specific focus on tourism is the result of tripartite demands and reflects a growing interest in tourism as a driving force of economic growth and job creation in Tanzania.

¹⁵ For the review of the regulatory framework in Tanzania, see Ackson (2009)

21-25	63.4	59.7	56.2
26-30	76.3	69.1	68.3
31-35	78.6	74.5	65.0
36-40	71.2	64.4	59.2
41-50	87.3	78.2	54.7
51 and above	90.5	81.0	55.0
<i>Education</i>			
None	54.8	48.4	57.1
Primary school	69.1	59.8	56.1
Secondary school	75.8	70.4	61.2
Technical school	92.9	92.9	85.7
College, university and above	87.8	83.8	81.1
<i>Region</i>			
Dar es Salaam (capital)	71.7	61.8	52.6
Mwanza	78.1	77.2	82.2
Mbeya	83.5	83.5	82.4
<i>Covered by collective agreements</i>			
	80.7	71.6	69.2
Yes	72.3	66.7	59.3
No			
<i>Having a written contract or agreement</i>			
Yes	64.0	59.9	55.8
No	79.6	71.4	65.4

Source: Working conditions survey in Tanzania (2009)

First, the awareness of minimum wages is high at 73.9 per cent, while the incidence is much lower for maternity protection at 61.9 per cent, due to lower awareness among male workers (55.8 per cent). The awareness of working time standards was higher than that of the maternity protection entitlements, but lower than that of minimum wages. The comparatively high awareness of minimum wages appears to reflect the relative importance that workers tend to attribute to different aspects of working conditions.

Not surprisingly, the incidence of awareness is positively correlated with age and educational attainment, with the exception of the relationship between age and maternity protection, which does not show any clear pattern. The influence of age is particularly strong in the case of working time and minimum wages, perhaps suggesting that work experience provides a critical opportunity for workers to learn about their legal rights. For example, only one-third of young workers aged 16-20 were aware of the statutory maximum hours and minimum wages, but the incidence more than doubled for the age group of 26-30. Educational attainment displays a similar pattern.

One can readily assume that employment contracts and collective agreements are important tools to help workers learn about their legal rights (e.g., statutory regulations provide a basis for employment contracts in many countries). However, this assumption does not receive strong support from the Tanzanian survey. As Table 2 shows, the

incidence of awareness is higher among worker who reported that they were covered by collective agreements (e.g., in the case of minimum wages, 80.7 per cent versus 72.3 per cent), but the difference is rather small (about 5-10 percentage points). In the case of employment contracts, the result is more surprising. Table 2 shows that having a formal employment relationship, by concluding a written contract or agreement, actually reduces the likelihood that workers are aware of the major legal rights in the area of working conditions. The gaps are large and significant.

This paradoxical result, however, needs to be interpreted with great care. For instance, it is noteworthy that in Tanzania written contracts or agreements lack what can be considered “essential” elements. As Table 3 demonstrates, about half of these contracts and agreements did not include any details about wages or working hours, and only one fifth contained specific references to maternity leave. The lack of these essential details means that the impact of such contracts on both awareness and actual conditions of work is very limited.

Table 3. Employment contracts without teeth:

% of written contract or agreements which provide details on wages, working time and maternity leave (N=553)

Wages	Working time	Maternity leave
49.5	52.2	21.9

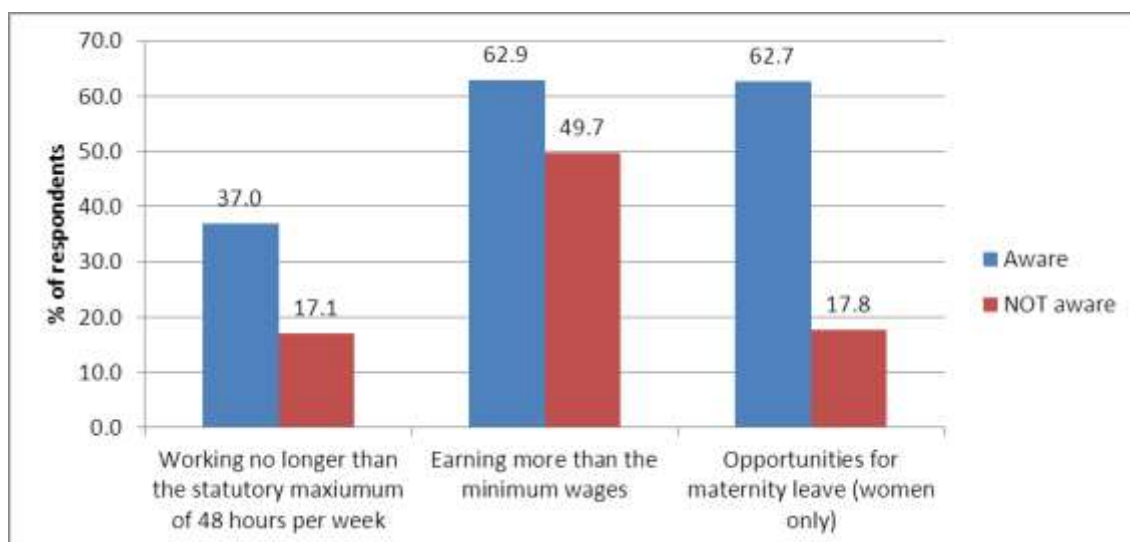
Source: Working conditions survey in Tanzania (2009)

Does awareness matter?: awareness and actual conditions

The key question for this paper is whether workers’ awareness matters in improving actual working conditions. In particular, we are interested in the extent to which workers’ awareness can contribute to increasing compliance or observance with statutory regulation. The Tanzanian survey suggests that it matters considerably.

To illustrate this point, Figure 11.1 examines how actual conditions vary depending on workers’ awareness of relevant regulations in the area of working time, minimum wages and maternity protection. In the case of working time, 37.0 per cent of workers who are not aware of the statutory maximum hours (48 hours per week) work more than this legal limit. However, the ratio is much lower at 17.1 per cent for those who are aware of the statutory maximum. Similarly, although pay below the minimum wage is widespread in Tanzania, its incidence is much smaller among workers who are aware of minimum wages (49.7 vs. 62.9 per cent). The difference is most striking in the case of maternity protection. About 63 per cent of women workers who are aware of their legal entitlement to maternity leave believe that they will benefit from it when needed, but the proportion falls to 17.8 per cent for workers who are not aware of this statutory benefit.

Figure 11.1. Can awareness make a difference?: Working time, minimum wages and maternity leave



Source: Working conditions survey in Tanzania (2009)

To test the impact of awareness on actual working conditions in a more rigorous manner, a series of logistic regressions controlling for standard demographic variables have been undertaken. The results are reported in Table 4 in which all of three coefficients show the expected signals. The first column reports the relationship between two binary variables: working more than the statutory standard (48 hours) and being aware of this standard. The reported coefficients indicate that workers who are aware of the statutory standard are 1.6 times less likely to work more than this standard (holding constant other standard demographic variables). In the case of maternity protection, the impact of awareness is much greater. Women workers who are aware of maternity protection law are 2.6 times more likely to benefit from maternity leave.

The likelihood of earning no less than minimum wages is positively related to the awareness of the statutory minimum wage rates. It is estimated that workers' awareness would increase this likelihood by 35 per cent, but the coefficient is not statistically significant. This is partly due to the fact that this statistical exercise is less relevant to minimum wages. For instance, high-wage earners are not particularly interested in the statutory minimum wage, as their wages are far above it.

Table 4. Can awareness make difference?: The results of logistic regressions

	Working Time (all)	Minimum Wage (all)	Maternity protection (women only)
Coefficient	-1.59 (.28)*	.35 (.23)	2.6 (.43)*
Odds ratio	.20 (.06)*	1.42 (.33)	13.42 (5.83)*

Source: Working conditions survey in Tanzania (2009)

Notes:

(1) * Significant at 5%

(2) Standard errors are in parentheses.

(3) Logistic regressions which include awareness as an independent variable, along with control variables such as gender, education, age, industry, occupation, and size of the establishment.

(4) Dependent variables: working more than 48 hours (working time); being paid more than minimum wages (minimum wages); and benefiting from maternity leave (maternity protection)

How can awareness improve actual working conditions?: job satisfaction and workers' behavioural patterns

The analysis so far has shown that increased awareness can contribute to improved working conditions. The question is then *how* this can happen, or more specifically the channelling mechanism through which awareness translates into actual improvements in the work environment. While this is a complex question that needs to take into consideration a variety of factors, in this paper we will examine two possible elements: job satisfaction and workers' behavioural patterns in relation to non-compliance with labour laws.

Table 5. Awareness and job dissatisfaction: working hours – regression coefficients

	Constant	Awareness (Statutory maximum hours)	Controlling for Actual hours (5 categories)
Dissatisfaction with working hours (1=very satisfied, ..., 4= not satisfied at all)			
<i>All</i>	1.818	.196 (.060)*	.057 (.020)*
<i>Men</i>	(.102)*	.103 (.036)*	.034(.024)
<i>Women</i>	1.877	.050 (.118)	.236 (.070)*
	(.126)*		
	1.779		
	(.180)*		

Source: Working conditions survey in Tanzania (2009)

Notes:

(1) Figures in brackets refer to standard errors

(2) * Significant at 1% level

(3) Other controlled variables (see Table 4) are not reported, except actual hours

First, the awareness of legal rights and the resulting recognition that they are not being complied with can make workers view their working environment in an unfavourable way, and therefore may reduce overall job satisfaction. Such an impact on job satisfaction can prompt efforts to remedy the situation, and in fact it is known that job satisfaction can determine workers' performance and future behavioural patterns such as turnover (see Green 2006 for a review; Lee 2005). It is feasible to examine this possibility with regard to working time, as the survey includes a question asking if the respondents are satisfied with current working hours.¹⁶ Table 5 reports the results of a simple regression on job dissatisfaction which controls for actual working hours. It is clear from this table that workers' dissatisfaction with working hours increases with their levels of awareness of statutory maximum working hours, once their actual working hours are controlled for.

¹⁶ Such an analysis is not feasible for minimum wages and maternity protection.

Another point worth noting when we evaluate the role of legal awareness is that workers are not passive once they recognize the gaps between legal entitlements and their actual conditions of work. In fact, awareness may tend to lead to corrective actions, although they may not always be successful. This is clearly demonstrated from the responses to our survey question on techniques to address divergence from the legal standards: “Suppose you had a problem at work because your working conditions were not in line with your legal rights. What would be the most effective way of solving the problem?” The majority of respondents (57.8 per cent) preferred the direct method of complaining to their employers. Passive measures such as “do not complain” or “complain to colleagues” were minority options. Striking also, is that resorting to trade unions, lawyers or government authorities were not the popular options.

This result implies that workers’ awareness can play a significant role in improving working conditions by creating a new dynamic (e.g., complaint, negotiation, confrontation) at the workplace. Evidently, this process is cheaper but can be more effective than other methods such as labour inspection.

Table 6. How would workers react? (% of respondents)

Suppose you had a problem at work because your working conditions were not in line with your legal rights. What would be the most effective way of solving the problem?				
Do not complain	Complain to your employer	Complain to trade union	Complain to colleagues	Others*
10.4	57.8	3.3	14.8	13.8

Source: Working conditions survey in Tanzania (2009)

* Including “complain to a government agency”, “complain to an NGO”, “contact a lawyer”, “bring a claim in a court”, and “others”.

Implications and conclusions

The findings from the survey reveal that there are certain factors affecting workers’ awareness of working conditions laws, which appear to have a significant bearing on actual working conditions. Furthermore, the logistic regression results for working hours and maternity protection bolster our hypothesis that legal awareness will make some difference in actual working conditions.

Despite the limited research on workers’ awareness of labour laws and working conditions, especially in the context of developing countries, the case of Tanzania suggests a strong linkage between workers’ awareness and their actual working conditions. Moreover, when workers’ legal rights were violated at the workplace, a large portion of the respondents noted that they would resort to direct confrontation method such as complaining to the employer. Hence, it can be suggested that learning about legal rights at the workplace is akin to providing different perspectives to workers of acceptable working conditions, which they can then use to re-think their current working environment or any dissatisfaction they might have previously experienced. This implies that workers’ legal awareness has the potential to become an effective instrument to improve working conditions, increase job satisfaction and encourage proactive behavioural patterns.

The findings of this paper also provide important insights into the on-going debates on the labour market impact of labour regulations. First, the Tanzania survey confirmed the presence of enforcement gaps (e.g., Chart 1). These gaps are massive, so that the relevance of common statistical exercises which regress the indicators of labour regulations on labour market variables becomes questionable. It also means that the indicators of labour regulations (particularly World Banks' "Employing Workers" indicators) do not properly capture the actual "constraints" employers encounter. In other words, the "constraints" on business summarized in these indicators tend to suffer from over-estimation. Finally, the finding that this enforcement gap may be narrowed to some degree by awareness-raising supports the view that, at least in developing countries, the debate should not be between "regulation" and "de-regulation" but rather on how these countries can best promote labour laws and policies or "how to regulate" (Lee, McCann, and Torm 2008; Fenwick et al. 2007). In this way, countries can avoid the wasteful process of continuous labour law reform carried out in the absence of any opportunity to evaluate the impacts of these reforms; an approach that has overwhelmed the governments of many Asian and African countries under pressure from the international financial organizations.

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